

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION**

In re:

JAMES F. MCAULIFFE,

Debtor.

## CHAPTER 7

CASE NO. 16-11089-MSH

JOHN O. DESMOND, CHAPTER 7  
TRUSTEE FOR THE ESTATE OF  
JAMES F. MCAULIFFE

Plaintiff,

V.

ADVERSARY PROCEEDING

NO. 16-01164-MSH

ROBIN S. GILBERT,

Defendant.

## **JOINT MOTION TO AMEND THE DISCOVERY PLAN**

The plaintiff John O. Desmond, the duly appointed Chapter 7 Trustee (the “Trustee”) for the bankruptcy estate of James F. McAuliffe (the “Debtor”) and the Defendant, Robin S. Gilbert (the “Defendant”) (collectively the “Parties”) hereby move to amend the Parties’ Court-approved Discovery Plan in this case for the purpose of extending all current deadlines by an additional sixty (60) days.

In support of this Motion, the Parties state as follows:

1. On September 15, 2016, the Trustee filed an adversary complaint against Robin S. Gilbert pursuant to Section 363(h) of the Bankruptcy Code and Rule 7001(3) of the Federal Rules of Bankruptcy Procedure (the “Adversary Complaint”).

2. On June 9, 2017 the Parties filed a Joint Motion to Extend the Summary Judgment Deadline [Docket No. 28], since they were actively involved in settlement negotiations.

3. On June 12, 2017, the Court allowed the Parties' Joint Motion to Extend the Summary Judgment Deadline [Docket No. 29].

4. Since filing the Joint Motion to Extend the Summary Judgment Deadline the Parties continue to attempt to resolve the claims asserted in the Adversary Complaint via settlement discussions and have exchanged several settlement proposals to this end. The Parties have additionally completed fact discovery and Plaintiff provided its expert real estate appraisal report with the Defendant on June 5, 2017 in accordance with the Discovery Plan. Since significant progress is being made, the Parties would prefer to devote time and effort toward settlement negotiations rather than devote resources to summary judgment and other case preparation. Therefore, the Parties are seeking to extend the current Discovery Plan deadlines by an additional sixty (60) days to provide the Parties with additional time to continue settlement discussions without the necessity of further litigation.

5. Therefore the Parties propose amending the current Discovery Plan deadlines as follows:

<b>Deadline</b>	<b>Current Discovery Plan Deadlines</b>	<b>Proposed Deadlines</b>
Defendant's Expert Report	July 18, 2017	September 18, 2017
Expert Depositions	August 7, 2017	October 6, 2017
Summary Judgment	July 20, 2017	September 18, 2017
Joint Pretrial Memorandum	September 18, 2017	November 17, 2017

6. The Parties state that the requested changes to the Discovery Plan will not prejudice any party, nor will it result in any added burden on the Court.

WHEREFORE, John O. Desmond, the Chapter 7 Trustee, and Robin S. Gilbert respectfully request that this honorable Court enter an order (i) allowing the Joint Motion to Amend the Discovery Plan to extend all current deadlines in the Discovery Plan by an additional 60 days; and (ii) granting any such further relief as is just and proper.

Respectfully submitted,

**JOHN O. DESMOND, CHAPTER 7 TRUSTEE  
OF THE ESTATE OF JAMES. F. MCAULIFFE**

**By his attorneys,**

/s/ Anthony R. Leone

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Dated: July 10, 2017

**ROBIN S. GILBERT**

**By her attorney,**

/s/ Gary Cruickshank

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Dated: July 10, 2017

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## CERTIFICATE OF SERVICE

I, Anthony R. Leone, of Murtha Cullina LLP, do hereby certify that on the 10th day of July, 2017, I served a copy of the within ***Joint Motion to Amend the Discovery Plan*** through the ECF system to registered participants.

/s/Anthony R. Leone  
Anthony R. Leone